

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

SUPERSEDING INDICTMENT

- v. -

S4 16 Cr. 832 (KMK)

NICHOLAS TARTAGLIONE,

Defendant.

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COUNT ONE

The Grand Jury charges:

1. From at least in or about 2015, up to and including in or about April 2016, in the Southern District of New York and elsewhere, NICHOLAS TARTAGLIONE, the defendant, and others known and unknown, intentionally and knowingly did combine, conspire, confederate, and agree together and with each other to violate the narcotics laws of the United States.

2. It was a part and an object of the conspiracy that NICHOLAS TARTAGLIONE, the defendant, and others known and unknown, would and did distribute and possess with intent to distribute a controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

3. The controlled substance that NICHOLAS TARTAGLIONE, the defendant, conspired to distribute and possess with intent to distribute was 5 kilograms and more of mixtures

and substances containing a detectable amount of cocaine, in violation of Title 21, United States Code, Section 841(b)(1)(A).

(Title 21, United States Code, Section 846.)

COUNT TWO

The Grand Jury further charges:

4. In or about April 2016, in the Southern District of New York, while engaged in an offense punishable under Section 841(b)(1)(A) of Title 21, United States Code, to wit, a conspiracy to distribute, and to possess with the intent to distribute, 5 kilograms and more of mixtures and substances containing a detectable amount of cocaine, NICHOLAS TARTAGLIONE, the defendant, intentionally and knowingly killed, and counseled, commanded, induced, procured, and caused the intentional killing of Martin Luna, in and around a bar known as the Likquid Lounge at 69 Brookside Avenue, Chester, New York (the "Likquid Lounge"), and did aid and abet the same.

(Title 21, United States Code, Section 848(e)(1)(A);
Title 18, United States Code, Section 2.)

COUNT THREE

The Grand Jury further charges:

5. In or about April 2016, in the Southern District of New York, while engaged in an offense punishable under Section 841(b)(1)(A) of Title 21, United States Code, to wit, a conspiracy to distribute, and to possess with the intent to

distribute, 5 kilograms and more of mixtures and substances containing a detectable amount of cocaine, NICHOLAS TARTAGLIONE, the defendant, intentionally and knowingly killed, and counseled, commanded, induced, procured, and caused the intentional killing of Urbano Santiago, in and around the vicinity of 419 Old Mountain Road in Otisville, New York, and did aid and abet the same.

(Title 21, United States Code, Section 848(e)(1)(A);
Title 18, United States Code, Section 2.)

COUNT FOUR

The Grand Jury further charges:

6. In or about April 2016, in the Southern District of New York, while engaged in an offense punishable under Section 841(b)(1)(A) of Title 21, United States Code, to wit, a conspiracy to distribute, and to possess with the intent to distribute, 5 kilograms and more of mixtures and substances containing a detectable amount of cocaine, NICHOLAS TARTAGLIONE, the defendant, intentionally and knowingly killed, and counseled, commanded, induced, procured, and caused the intentional killing of Miguel Luna, in and around the vicinity of 419 Old Mountain Road in Otisville, New York, and did aid and abet the same.

(Title 21, United States Code, Section 848(e)(1)(A);
Title 18, United States Code, Section 2.)

COUNT FIVE

The Grand Jury further charges:

7. In, or about April 2016, in the Southern District of New York, while engaged in an offense punishable under Section 841(b)(1)(A) of Title 21, United States Code, to wit, a conspiracy to distribute, and to possess with the intent to distribute, 5 kilograms and more of mixtures and substances containing a detectable amount of cocaine, NICHOLAS TARTAGLIONE, the defendant, intentionally and knowingly killed, and counseled, commanded, induced, procured, and caused the intentional killing of Hector Gutierrez, in and around the vicinity of 419 Old Mountain Road in Otisville, New York, and did aid and abet the same.

(Title 21, United States Code, Section 848(e)(1)(A);
Title 18, United States Code, Section 2.)

COUNT SIX

The Grand Jury further charges:

8. On or about April 11, 2016, in the Southern District of New York, NICHOLAS TARTAGLIONE, the defendant, willfully and knowingly, during and in relation to a drug trafficking crime for which he may be prosecuted in a court of the United States, namely, the narcotics conspiracy charged in Count One of this Indictment, did use and carry a firearm, and, in furtherance of such drug trafficking crime, did possess a

firearm, and in the course of that drug trafficking crime did, through the use of a firearm, cause the death of Urbano Santiago, which killing was murder as defined in Title 18, United States Code, Section 1111(a), and did aid and abet the same.

(Title 18, United States Code, Sections 924(j) and 2.)

COUNT SEVEN

The Grand Jury further charges:

9. On or about April 11, 2016, in the Southern District of New York, NICHOLAS TARTAGLIONE, the defendant, willfully and knowingly, during and in relation to a drug trafficking crime for which he may be prosecuted in a court of the United States, namely, the narcotics conspiracy charged in Count One of this Indictment, did use and carry a firearm, and, in furtherance of such drug trafficking crime, did possess a firearm, and in the course of that drug trafficking crime did, through the use of a firearm, cause the death of Miguel Luna, which killing was murder as defined in Title 18, United States Code, Section 1111(a), and did aid and abet the same.

(Title 18, United States Code, Sections 924(j) and 2.)

COUNT EIGHT

The Grand Jury further charges:

10. On or about April 11, 2016, in the Southern District of New York, NICHOLAS TARTAGLIONE, the defendant,

willfully and knowingly, during and in relation to a drug trafficking crime for which he may be prosecuted in a court of the United States, namely, the narcotics conspiracy charged in Count One of this Indictment, did use and carry a firearm, and, in furtherance of such drug trafficking crime, did possess a firearm, and in the course of that drug trafficking crime did, through the use of a firearm, cause the death of Hector Gutierrez, which killing was murder as defined in Title 18, United States Code, Section 1111(a), and did aid and abet the same.

(Title 18, United States Code, Sections 924(j) and 2.)

COUNT NINE

The Grand Jury further charges:

11. On or about April 11, 2016, in the Southern District of New York and elsewhere, NICHOLAS TARTAGLIONE, the defendant, and others known and unknown, unlawfully and knowingly did conspire to violate Title 18, United States Code, Section 1201.

12. It was a part and an object of the conspiracy that NICHOLAS TARTAGLIONE, the defendant, and others known and unknown, would and did unlawfully seize, confine, inveigle, decoy, kidnap, abduct, and carry away and hold for ransom and reward and otherwise a person, and used a means, facility, and instrumentality of interstate and foreign commerce in committing

and in furtherance of the commission of the offense, to wit, TARTAGLIONE and others known and unknown agreed to inveigle, seize, and confine Martin Luna, Urbano Santiago, Miguel Luna, and Hector Gutierrez in and around the Likquid Lounge.

Overt Act

13. In furtherance of the conspiracy and to effect the illegal object thereof, the following overt act, among others, was committed in the Southern District of New York and elsewhere:

a. On or about April 11, 2016, NICHOLAS TARTAGLIONE and others lured Martin Luna to the Likquid Lounge, where TARTAGLIONE and others confined Martin Luna, Urbano Santiago, Miguel Luna, and Hector Gutierrez and would not permit them to leave the premises.

(Title 18, United States Code, Section 1201(c).)

COUNT TEN

The Grand Jury further charges:

14. On or about April 11, 2016, in the Southern District of New York and elsewhere, NICHOLAS TARTAGLIONE, the defendant, and others known and unknown, unlawfully, willfully, and knowingly did seize, confine, inveigle, decoy, kidnap, abduct, and carry away and hold for ransom and reward and otherwise a person, and used a means, facility, and instrumentality of interstate and foreign commerce in committing

and in furtherance of the commission of the offense, and did aid and abet the same, to wit, TARTAGLIONE lured Martin Luna to the Likquid Lounge and confined Martin Luna in and around the Likquid Lounge, which resulted in the death of Martin Luna.

(Title 18, United States Code, Sections 1201(a)(1) and 2.)

COUNT ELEVEN

The Grand Jury further charges:

15. On or about April 11, 2016, in the Southern District of New York and elsewhere, NICHOLAS TARTAGLIONE, the defendant, and others known and unknown, unlawfully, willfully, and knowingly did seize, confine, inveigle, decoy, kidnap, abduct, and carry away and hold for ransom and reward and otherwise a person, and used a means, facility, and instrumentality of interstate and foreign commerce in committing and in furtherance of the commission of the offense, and did aid and abet the same, to wit, TARTAGLIONE and others seized and confined Urbano Santiago in and around the Likquid Lounge and in and around the vicinity of 419 Old Mountain Road in Otisville, New York, which resulted in the death of Urbano Santiago.

(Title 18, United States Code, Sections 1201(a)(1) and 2.)

COUNT TWELVE

The Grand Jury further charges:

16. On or about April 11, 2016, in the Southern District of New York and elsewhere, NICHOLAS TARTAGLIONE, the

defendant, and others known and unknown, unlawfully, willfully, and knowingly did seize, confine, inveigle, decoy, kidnap, abduct, and carry away and hold for ransom and reward and otherwise a person, and used a means, facility, and instrumentality of interstate and foreign commerce in committing and in furtherance of the commission of the offense, and did aid and abet the same, to wit, TARTAGLIONE and others seized and confined Miguel Luna in and around the Likquid Lounge and in and around the vicinity of 419 Old Mountain Road in Otisville, New York, which resulted in the death of Miguel Luna.

(Title 18, United States Code, Sections 1201(a)(1) and 2.)

COUNT THIRTEEN

The Grand Jury further charges:

17. On or about April 11, 2016, in the Southern District of New York and elsewhere, NICHOLAS TARTAGLIONE, the defendant, and others known and unknown, unlawfully, willfully, and knowingly did seize, confine, inveigle, decoy, kidnap, abduct, and carry away and hold for ransom and reward and otherwise a person, and used a means, facility, and instrumentality of interstate and foreign commerce in committing and in furtherance of the commission of the offense, and did aid and abet the same, to wit, TARTAGLIONE and others seized and confined Hector Gutierrez in and around the Likquid Lounge and in and around the vicinity of 419 Old Mountain Road in

Otisville, New York, which resulted in the death of Hector Gutierrez.

(Title 18, United States Code, Sections 1201(a)(1) and 2.)

COUNT FOURTEEN

The Grand Jury further charges:

18. On or about April 11, 2016, in the Southern District of New York and elsewhere, NICHOLAS TARTAGLIONE, the defendant, knowingly traveled in interstate and foreign commerce and used the mails and any facility in interstate and foreign commerce with intent to commit a crime of violence, namely, assault and murder, to further an unlawful activity, namely, a business enterprise involving a controlled substance, and with intent to promote, manage, establish, and carry on, and facilitate the promotion, management, establishment, and carrying on of the unlawful activity, and thereafter did perform a crime of violence to further the unlawful activity, and did aid and abet the same, and death resulted, to wit, TARTAGLIONE arranged for Martin Luna to be lured to the Likquid Lounge, where Luna was killed.

(Title 18, United States Code, Sections 1952
and 2.)

COUNT FIFTEEN

The Grand Jury further charges:

19. On or about April 11, 2016, in the Southern District of New York and elsewhere, NICHOLAS TARTAGLIONE, the

defendant, knowingly traveled in interstate and foreign commerce and used the mails and any facility in interstate and foreign commerce with intent to commit a crime of violence, namely, assault and murder, to further an unlawful activity, namely, a business enterprise involving a controlled substance, and with intent to promote, manage, establish, and carry on, and facilitate the promotion, management, establishment, and carrying on of the unlawful activity, and thereafter did perform a crime of violence to further the unlawful activity, and did aid and abet the same, and death resulted, to wit, after Urbano Santiago accompanied Martin Luna to the Likquid Lounge, where Luna had been lured by TARTAGLIONE and others, Urbano Santiago was held captive, transported to the vicinity of 419 Old Mountain Road in Otisville, New York, and killed.

(Title 18, United States Code, Sections 1952
and 2.)

COUNT SIXTEEN

The Grand Jury further charges:

20. On or about April 11, 2016, in the Southern District of New York and elsewhere, NICHOLAS TARTAGLIONE, the defendant, knowingly traveled in interstate and foreign commerce and used the mails and any facility in interstate and foreign commerce with intent to commit a crime of violence, namely, assault and murder, to further an unlawful activity, namely, a business enterprise involving a controlled substance, and with

intent to promote, manage, establish, and carry on, and facilitate the promotion, management, establishment, and carrying on of the unlawful activity, and thereafter did perform a crime of violence to further the unlawful activity, and did aid and abet the same, and death resulted, to wit, after Miguel Luna accompanied Martin Luna to the Likquid Lounge, where Martin Luna had been lured by TARTAGLIONE and others, Miguel Luna was held captive, transported to the vicinity of 419 Old Mountain Road in Otisville, New York, and killed.

(Title 18, United States Code, Sections 1952 and 2.)

COUNT SEVENTEEN

The Grand Jury further charges:

21. On or about April 11, 2016, in the Southern District of New York and elsewhere, NICHOLAS TARTAGLIONE, the defendant, knowingly traveled in interstate and foreign commerce and used the mails and any facility in interstate and foreign commerce with intent to commit a crime of violence, namely, assault and murder, to further an unlawful activity, namely, a business enterprise involving a controlled substance, and with intent to promote, manage, establish, and carry on, and facilitate the promotion, management, establishment, and carrying on of the unlawful activity, and thereafter did perform a crime of violence to further the unlawful activity, and did aid and abet the same, and death resulted, to wit, after Hector

Gutierrez accompanied Martin Luna to the Likquid Lounge, where Luna had been lured by TARTAGLIONE and others, Hector Gutierrez was held captive, transported to the vicinity of 419 Old Mountain Road in Otisville, New York, and killed.

(Title 18, United States Code, Sections 1952
and 2.)

SPECIAL FINDINGS

22. Counts Two and Ten of this Indictment are realleged and incorporated by reference as though fully set forth herein. As to Counts Two and Ten, alleging the intentional killing of Martin Luna in furtherance of a drug trafficking crime (Count Two) and the kidnapping resulting in death of Martin Luna (Count Ten), the defendant NICHOLAS TARTAGLIONE:

a. was 18 years of age or older at the time of the offense (Title 18, United States Code, Section 3591(a)(2));

b. intentionally killed the victim (Title 18, United States Code, Section 3591(a)(2)(A));

c. intentionally inflicted serious bodily injury that resulted in the death of the victim (Title 18, United States Code, Section 3591(a)(2)(B));

d. intentionally participated in an act, contemplating that the life of a person would be taken and intending that lethal force would be used in connection with a

person, other than one of the participants in the offense, and the victim died as a direct result of the act (Title 18, United States Code, Section 3591(a)(2)(C));

e. intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for human life and the victim died as a direct result of the act (Title 18, United States Code, Section 3591(a)(2)(D);

f. caused the death, and injury resulting in death, of the victim, during the commission of an offense under Title 18, United States Code, Section 1201 (kidnapping) (Title 18, United States Code, Section 3592(c)(1));

g. committed the offense in an especially heinous, cruel, and depraved manner in that it involved torture and serious physical abuse to the victim (Title 18, United States Code, Section 3592(c)(6);

h. committed the offense after substantial planning and premeditation to cause the death of a person (Title 18, United States Code, Section 3592(c)(9)); and

i. intentionally killed and attempted to kill more than one person in a single criminal episode (Title 18, United States Code, Section 3592(c)(16)).

23. Counts Three, Six, and Eleven of this Indictment are realleged and incorporated by reference as though fully set forth herein. As to Counts Three, Six, and Eleven, alleging the intentional killing of Urbano Santiago in furtherance of a drug trafficking crime (Count Three), the murder of Urbano Santiago through the use of a firearm in furtherance of a drug trafficking crime (Count Six), and the kidnapping resulting in death of Urbano Santiago (Count Eleven), the defendant NICHOLAS TARTAGLIONE:

a. was 18 years of age or older at the time of the offense (Title 18, United States Code, Section 3591(a)(2));

b. intentionally participated in an act, contemplating that the life of a person would be taken and intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and the victim died as a direct result of the act (Title 18, United States Code, Section 3591(a)(2)(C));

c. intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for human life and the victim died as a direct result of the act (Title 18, United States Code, Section 3591(a)(2)(D));

d. caused the death, and injury resulting in death, of the victim, during the commission of an offense under Title 18, United States Code, Section 1201 (kidnapping) (Title 18, United States Code, Section 3592(c)(1));

e. committed the offense after substantial planning and premeditation to cause the death of a person (Title 18, United States Code, Section 3592(c)(9)); and

f. intentionally killed more than one person in a single criminal episode (Title 18, United States Code, Section 3592(c)(16)).

24. Counts Four, Seven, and Twelve of this Indictment are realleged and incorporated by reference as though fully set forth herein. As to Four, Seven, and Twelve, alleging the intentional killing of Miguel Luna in furtherance of a drug trafficking crime (Count Four), the murder of Miguel Luna through the use of a firearm in furtherance of a drug trafficking crime (Count Seven), and the kidnapping resulting in death of Miguel Luna (Count Eleven), the defendant NICHOLAS TARTAGLIONE:

a. was 18 years of age or older at the time of the offense (Title 18, United States Code, Section 3591(a)(2));

b. intentionally participated in an act, contemplating that the life of a person would be taken and intending that lethal force would be used in connection with a

person, other than one of the participants in the offense, and the victim died as a direct result of the act (Title 18, United States Code, Section 3591(a)(2)(C));

c. intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for human life and the victim died as a direct result of the act (Title 18, United States Code, Section 3591(a)(2)(D));

d. caused the death, and injury resulting in death, of the victim, during the commission of an offense under Title 18, United States Code, Section 1201 (kidnapping) (Title 18, United States Code, Section 3592(c)(1));

e. committed the offense after substantial planning and premeditation to cause the death of a person (Title 18, United States Code, Section 3592(c)(9)); and

f. intentionally killed more than one person in a single criminal episode (Title 18, United States Code, Section 3592(c)(16)).

25. Counts Five, Eight, and Thirteen of this Indictment are realleged and incorporated by reference as though fully set forth herein. As to Counts Five, Eight, and Thirteen, alleging the intentional killing of Hector Gutierrez in

furtherance of a drug trafficking crime (Count Five), the murder of Hector Gutierrez through the use of a firearm in furtherance of a drug trafficking crime (Count Eight), and the kidnapping resulting in death of Hector Gutierrez (Count Thirteen), the defendant NICHOLAS TARTAGLIONE:

a. was 18 years of age or older at the time of the offense (Title 18, United States Code, Section 3591(a)(2));

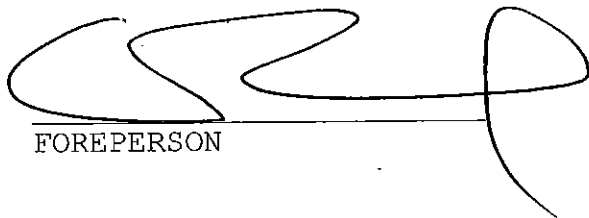
b. intentionally participated in an act, contemplating that the life of a person would be taken and intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and the victim died as a direct result of the act (Title 18, United States Code, Section 3591(a)(2)(C));

c. intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for human life and the victim died as a direct result of the act (Title 18, United States Code, Section 3951(a)(2)(D);

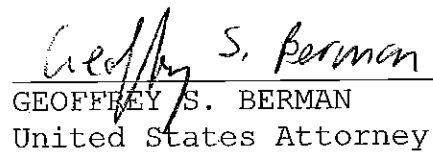
d. caused the death, and injury resulting in death, of the victim, during the commission of an offense under Title 18, United States Code, Section 1201 (kidnapping) (Title 18, United States Code, Section 3592(c)(1));

e. committed the offense after substantial planning and premeditation to cause the death of a person (Title 18, United States Code, Section 3592(c)(9)); and

f. intentionally killed more than one person in a single criminal episode (Title 18, United States Code, Section 3592(c)(16)).



FOREPERSON



GEOFFREY S. BERMAN
United States Attorney

Form No. USA-33s-274 (Ed. 9-25-58)

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SUPERSEDING INDICTMENT

S4 16 Cr. 832 (KMK)

(21 U.S.C. §§ 846 and 848(e);
18 U.S.C. §§ 924(j), 1201(c),
1201(a)(1), 1952, and 2.)

A handwritten signature in black ink, consisting of a large, stylized 'G' followed by a horizontal line and a loop.

Foreperson GEOFFREY S. BERMAN
United States Attorney.
